
SENATE BILL No. 409

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-26.

Synopsis: Commitment based on law enforcement affidavit. Provides that an application or a petition for the commitment of a person who is alleged to be mentally ill and either dangerous or gravely disabled does not require a physician's written statement if a law enforcement officer files the application or petition with an affidavit stating certain information. Requires a court to appoint a physician to examine a person who is alleged to be mentally ill and either dangerous or gravely disabled before a commitment hearing.

Effective: July 1, 2005.

Steele

January 13, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 409

A BILL FOR AN ACT to amend the Indiana Code concerning mental health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-26-5-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) An individual
3 may be detained in a facility for not more than seventy-two (72) hours
4 under this chapter, excluding Saturdays, Sundays, and legal holidays,
5 if a written application for detention is filed with the facility. The
6 individual may not be detained in a state institution unless the
7 detention is instituted by the state institution.

8 (b) **Except as provided in subsection (c)**, an application under
9 subsection (a) must contain both of the following:

- 10 (1) A statement of the applicant's belief that the individual is:
11 (A) mentally ill and either dangerous or gravely disabled; and
12 (B) in need of immediate restraint.

- 13 (2) A statement by at least one (1) physician that, based on:
14 (A) an examination; or
15 (B) information given the physician;
16 the individual may be mentally ill and either dangerous or gravely
17 disabled.



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(c) An application under subsection (a) does not require a physician's written statement if:

- (1) a law enforcement officer files the application; and
- (2) the law enforcement officer provides the facility a sworn affidavit:

(A) stating why the law enforcement officer believes the individual is:

(i) mentally ill and either dangerous or gravely disabled; and

(ii) in need of commitment until a physician is able to examine the individual; and

(B) describing the law enforcement officer's interactions and conversations with the individual that have led the law enforcement officer to believe the individual is:

(i) mentally ill and either dangerous or gravely disabled; and

(ii) in need of commitment until a physician is able to examine the individual.

SECTION 2. IC 12-26-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. Before the end of a detention period under this chapter, the superintendent of the facility or the individual's attending physician shall make a written report to the court. The report must contain both of the following:

- (1) A statement ~~that~~ **whether** the individual has been examined.
- (2) A statement whether there is probable cause to believe that the individual:

(A) is mentally ill and either dangerous or gravely disabled; and

(B) requires continuing care and treatment.

SECTION 3. IC 12-26-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) After receiving a report described in section 7 of this chapter, the court may do any of the following:

- (1) Order the individual released.
- (2) Order the individual's continued detention pending a preliminary hearing. The purpose of a hearing under this subdivision is to determine if there is probable cause to believe that the individual is:
 - (A) mentally ill and either dangerous or gravely disabled; and
 - (B) in need of temporary or regular commitment.
- (3) Order a final hearing. The purpose of a hearing ordered under this subdivision is to determine if the individual is:

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(A) mentally ill and either dangerous or gravely disabled; and

(B) in need of temporary or regular commitment.

(b) A hearing ordered under subsection (a) must be held not later than two (2) days after the order.

(c) If an individual is detained because of an application filed without a physician's written statement under section (1)(c) of this chapter, the court shall appoint a physician to:

(1) examine the individual; and

(2) report the physician's opinion as to whether the individual:

(A) is mentally ill and either dangerous or gravely disabled; and

(B) needs temporary commitment to a facility for diagnosis, care, and treatment.

A physician appointed under this subsection must perform the duties set forth in this subsection before the court orders a hearing under subsection (a).

SECTION 4. IC 12-26-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A commitment under this chapter may be begun by any of the following methods:

(1) Upon request of the superintendent under IC 12-26-3-5.

(2) An order of the court having jurisdiction over the individual following emergency detention.

(3) Filing a petition with a court having jurisdiction in the county:

(A) of residence of the individual; or

(B) where the individual may be found.

(b) A petitioner under subsection (a)(3) must be at least eighteen (18) years of age.

(c) Except as provided in subsection (d), a petition under subsection (a)(3) must include a physician's written statement stating both of the following:

(1) The physician has examined the individual within the past thirty (30) days.

(2) The physician believes the individual is:

(A) mentally ill and either dangerous or gravely disabled; and

(B) in need of custody, care, or treatment in an appropriate facility.

(d) A petition under subsection (a)(3) does not require a physician's written statement if:

(1) a law enforcement officer files the petition; and

(2) the law enforcement officer provides the court a sworn affidavit:

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(A) stating why the law enforcement officer believes the individual is:

(i) mentally ill and either dangerous or gravely disabled; and

(ii) in need of commitment until a physician is able to examine the individual; and

(B) describing the law enforcement officer's interactions and conversations with the individual that have led the law enforcement officer to believe the individual is:

(i) mentally ill and either dangerous or gravely disabled; and

(ii) in need of commitment until a physician is able to examine the individual.

(e) If a court enters an order setting a hearing concerning an individual who is the subject of a petition under subsection (a)(3) and a physician's written statement was not filed with the petition as described in subsection (d), the court shall appoint a physician to:

(1) examine the individual; and

(2) report the physician's opinion as to whether the individual:

(A) is mentally ill and either dangerous or gravely disabled; and

(B) needs temporary commitment to a facility for diagnosis, care, and treatment.

A physician appointed under this subsection must perform the duties set forth in this subsection before the hearing date.

SECTION 5. IC 12-26-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. If a report made under section 2(e) or 6 of this chapter is that the individual is not either dangerous or gravely disabled, the court may terminate the proceedings and dismiss the petition. Otherwise, the hearing shall proceed as scheduled or as continued by the court.

SECTION 6. IC 12-26-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) **Except as provided in subsection (f)**, a petition filed under section 2 of this chapter must include a physician's written statement that states both of the following:

(1) The physician has examined the individual within the past thirty (30) days.

(2) The physician believes that the individual is:

(A) mentally ill and either dangerous or gravely disabled; and

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(B) in need of custody, care, or treatment in a facility for a period expected to be more than ninety (90) days.

(b) Except as provided in subsection (d), if the commitment is to a state institution administered by the division of mental health and addiction, the record of the proceedings must include a report from a community mental health center stating both of the following:

(1) The community mental health center has evaluated the individual.

(2) Commitment to a state institution administered by the division of mental health and addiction under this chapter is appropriate.

(c) The physician who makes the statement required by subsection (a) may be affiliated with the community mental health center that makes the report required by subsection (b).

(d) If the commitment is of an adult to a research bed at Larue D. Carter Memorial Hospital, as set forth in IC 12-21-2-3, the report from a community mental health center is not required.

(e) If a commitment ordered under subsection (a) is to a state institution administered by the division of disability, aging, and rehabilitative services, the record of commitment proceedings must include a report from a service coordinator employed by the division of disability, aging, and rehabilitative services stating that, based on a diagnostic assessment of the individual, commitment to a state institution administered by the division of disability, aging, and rehabilitative services under this chapter is appropriate.

(f) A petition filed under section 2 of this chapter does not require a physician's written statement if:

(1) a law enforcement officer files the petition; and

(2) the law enforcement officer provides the court a sworn affidavit:

(A) stating why the law enforcement officer believes the individual is:

(i) mentally ill and either dangerous or gravely disabled; and

(ii) in need of commitment until a physician is able to examine the individual; and

(B) describing the law enforcement officer's interactions and conversations with the individual that have led the law enforcement officer to believe the individual is:

(i) mentally ill and either dangerous or gravely disabled; and

(ii) in need of commitment until a physician is able to examine the individual.

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SECTION 7. IC 12-26-7-4 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Upon receiving:

(1) a petition under section 2 of this chapter; or

(2) a report under IC 12-26-6-11 that recommends treatment in a
facility for more than ninety (90) days;

the court shall enter an order setting a hearing date.

(b) If an individual is currently under a commitment order, the
hearing required by subsection (a) must be held before the expiration
of the current commitment period. Notice of a hearing under this
subsection shall be given to the individual and all other interested
persons at least five (5) days before the hearing date.

(c) The rights of an individual who is the subject of a proceeding
under this chapter and of a petitioner are the same as provided in
IC 12-26-6.

(d) Hearing procedures are the same as those provided in
IC 12-26-6.

**(e) If the court sets a hearing date under subsection (a)
concerning an individual who is the subject of a petition under
section 2 of this chapter and a physician's written statement was
not filed with the petition as described in section 3(f) of this
chapter, the court shall appoint a physician to:**

(1) examine the individual; and

**(2) report the physician's opinion as to whether the
individual:**

**(A) is mentally ill and either dangerous or gravely
disabled; and**

**(B) needs temporary commitment to a facility for
diagnosis, care, and treatment.**

**A physician appointed under this subsection must perform the
duties set forth in this subsection before the hearing date.**

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